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July 2, 2004

Via Hand Delivery

Ms. Marlene R. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

JUL - 2 2004

**Re: Cellular Mobile Systems of St. Cloud, LLC
CC Docket No. 96-45
Petition for Redefinition**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Dortch:

On behalf of Cellular Mobile Systems of St. Cloud, LLC and pursuant to Section 1.51(c)(1) of the Federal Communications Commission's Rules, enclosed for filing are an original and four (4) copies of the above-referenced Petition. Also enclosed is a pink copy of the Petition. Please date-stamp and return this copy to my attention.

If you have any questions, please communicate directly with the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.L. Murphy', with a stylized flourish at the end.

Rebecca L. Murphy

Enclosures

cc: Anita Cheng
Tom Buckely

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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUL - 2 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Federal-State Joint Board on)
Universal Service)
Cellular Mobile Systems of St. Cloud)
Petition for FCC Agreement to)
Redefine the Study Areas of Four Rural)
Telephone Companies in Minnesota)

CC Docket No. 96-45

To: Wireline Competition Bureau

PETITION FOR REDEFINITION

Cellular Mobile Systems of St. Cloud, LLC d/b/a Cellular 2000 of St. Cloud ("CMS"), by its attorneys, pursuant to Section 214(e)(5) of the Communications Act of 1934, *as amended*, ("Act") and Federal Communications Commission ("FCC") Rule 54.207, hereby submits this Petition for FCC Agreement to Redefine the Study Areas of four Rural Telephone Companies in Minnesota ("Petition"). Specifically, CMS seeks FCC agreement with the Minnesota Public Utility Commission's ("MPUC") redefinition of the study areas of the following four rural telephone companies: Citizens Telecommunications Company ("Citizens"), Benton Cooperative Telephone Co.

("Benton"), Melrose Telephone Co. ("Melrose"), and Sherburne County Rural Telephone Co. ("Sherburne").¹

I. INTRODUCTION

On October 8, 2003, CMS filed with the MPUC its Petition for Designation as an Eligible Telecommunications Carrier ("ETC").² In its ETC Petition, CMS proposed to serve only a portion of the study areas of the following Minnesota incumbent rural local exchange carriers ("LECs"): Citizens, Benton, Melrose, Sherburne, Lakedale Telephone Company ("Lakedale"), and Upsala Cooperative Telephone Association ("Upsala"). CMS, therefore, requested that the MPUC redefine these rural telephone companies' study areas.³ The Minnesota Department of Commerce ("MDOC") is the investigative arm of the MPUC and is responsible for making recommendations to the MPUC.⁴ On April 7, 2004, the MDOC recommended approval of CMS's ETC Petition with conditions.⁵ On April 27, 2004, pursuant to MPUC request and in light of the FCC's *Highland Cellular Order*,⁶ CMS filed a letter with the MPUC modifying its study area

¹ *In re Cellular Mobile Systems of St. Cloud, LLC Petition for ETC Designation*, Order, MPUC Docket No. PT6201/M-03-1618 (May 6, 2004) ("Final Order"). The Final Order is attached hereto as Exhibit A.

² *In re Cellular Mobile Systems of St. Cloud, LLC Petition for ETC Designation*, MPUC Docket No. PT6201/M-03-1618 (October 8, 2003) ("ETC Petition").

³ 47 U.S.C. § 214(e)(5).

⁴ Minn. Stat. § 45.027 (2003).

⁵ *In re Cellular Mobile Systems of St. Cloud, LLC Petition for ETC Designation*, Public Comments of the Minnesota Department of Commerce, MPUC Docket No. PT6201/M-03-1618 (April 7, 2004) ("MDOC Order"). The MDOC Order is attached hereto as Exhibit B.

⁶ *In the matter of Federal-State Joint Board on Universal Service, Highland Cellular Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 04-37 (April 12, 2004) ("*Highland Cellular Order*").

redefinition request to include only those rural exchanges which CMS serves in their entirety.⁷

The Act dictates that an ETC will be designated in a service area determined by the appropriate state commission.⁸ The term “service area” means a geographic area established by a state commission.⁹ In the case of an area served by a rural telephone company,¹⁰ service area means “study area” unless and until the FCC and the state commission, after taking into consideration recommendations of the Federal-State Joint Board (“Joint Board”), establish a different definition of service area for such company.¹¹

The Act requires that the state commission take into consideration the Joint Board’s recommendations when redefining a rural telephone company’s study area.¹² In its *Recommended Decision*, the Joint Board outlined its concerns for redefining a rural telephone company’s service area.¹³ These concerns include: (1) minimizing rural “cream skimming”; (2) recognizing that the Act places rural telephone companies on a different competitive footing from other carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than

⁷ *In re Cellular Mobile Systems of St. Cloud, LLC Petition for ETC Designation*, CMS ETC Designation Modification Request Letter, MPUC Docket No. PT6201/M-03-1618 (April 27, 2004) (“CMS Modification Letter”).

⁸ 47 U.S.C. § 214(e)(2). Minnesota Rule 7812.1400, subpart 3 provides the MPUC with the authority to redefine a rural telephone company service area. Minn. R. 7812.1400, Subp. 3 (2003) (“[T]he commission shall designate the local exchange carrier’s exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate. . . .”).

⁹ 47 U.S.C. § 214(e)(5).

¹⁰ 47 U.S.C. § 153(37).

¹¹ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

¹² 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

¹³ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶¶ 172- 174 (1996) (“*Recommended Decision*”).

a study area level.¹⁴ The FCC has stated that a state commission, when redefining a rural telephone company's service area, must properly address the Joint Board's concerns enumerated above.¹⁵

On May 6, 2004, the MPUC granted CMS's ETC Petition, designating CMS as an ETC for the purposes of receiving federal universal service support throughout its proposed area as modified by its April 27th letter, and approving its redefinition request.¹⁶ Pursuant to the FCC's Rules, a state commission or other party seeking FCC agreement in redefining a service area served by a rural telephone company shall submit a petition to the FCC. Accordingly, CMS submits this Petition for agreement with the MPUC's redefinition of Citizens, Benton, Melrose, and Sherburne's rural study areas.¹⁷ Pursuant to FCC Rule Section 54.207(c)(1), this petition includes: (1) the definition proposed by

¹⁴ *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532 (2002) ("RCC Holdings").

¹⁵ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338 ¶ 41 (January 22, 2004) ("Virginia Cellular Order").

¹⁶ See Exhibit A.

¹⁷ In its ETC Petition, CMS requested that the MPUC designate it as an ETC in its CMRS-licensed service area. Specifically, CMS requested that the MPUC designate it as an ETC in: (1) all areas in which its CMRS-licensed territory overlaps with Qwest Corporation's non-rural service area; (2) the entire study area of Albany Telephone Company, a rural telephone company; and (3) the exchanges in which its CMRS-licensed territory overlaps with the rural study areas of Citizens, Benton, Melrose, Sherburne, Lakedale, and Upsala. Because CMS's CMRS-licensed territory covers only a portion of the study areas of Citizens, Benton, Melrose, Sherburne, Lakedale, and Upsala, CMS also requested that the MPUC redefine the study areas of these rural telephone companies. CMS later modified its redefinition request to include only those wire centers that CMS serves in their entirety. Because CMS's CMRS-licensed territory covers wire centers in the Lakedale and Upsala study areas that it does not completely serve, CMS no longer seeks to redefine these study areas. CMS seeks to redefine only the Citizens, Benton, Melrose, and Sherburne study areas. See ETC Petition; see also CMS Modification Letter.

the state commission, and (2) the state commission's ruling or other official statement presenting the state commission's reasons for adopting its definition including an analysis that takes into consideration the Joint Board's recommendations.¹⁸

II. DISCUSSION

CMS requests FCC agreement with the MPUC's redefinition of the study areas of Citizens, Benton, Melrose, and Sherburne rural telephone companies. The MPUC's Final Order redefined the study areas of Citizens, Benton, Melrose, and Sherburne rural telephone companies to include only the wire centers that CMS serves in their entirety. These wire centers are listed in Exhibit C. The MPUC's reasons for adopting its definition are set forth below.¹⁹

As discussed above, the MDOC is the investigative arm of the MPUC and is responsible for making recommendations to the MPUC.²⁰ In its Order, the MDOC made recommendations to the MPUC and provided the rationale for adopting CMS's definition. Pursuant to FCC Rule 54.207(c), the MDOC's analysis included consideration of the Joint Board's recommendations. Among other things, the MDOC considered: (1) whether the competitive carrier is attempting to "cream skim" by only proposing to serve the lowest cost exchanges; (2) the rural carrier's special status under the Act; and (3) the administrative burden a rural LEC would face by calculating its cost

¹⁸ 47 C.F.R. § 54.207(c).

¹⁹ 47 C.F.R. § 54.207(c)(1).

²⁰ Minn. Stat. § 45.027 (2003).

on a basis other than its entire study area.²¹ The MDOC's analysis, adopted by the MPUC "with one adjustment,"²² is discussed below.

A. CMS is Not Attempting to Cream Skim

"Rural cream skimming" occurs when competitors serve only the low-cost high revenue customers in a rural telephone company's study area.²³ CMS based its requested ETC area on its licensed service area and requested redefinition at the wire center level in accordance with *Highland Cellular*.²⁴ The MDOC found that because CMS requested to be designated throughout its licensed territory, it does not appear that CMS is attempting to cream skim.²⁵ The MDOC concluded that "CMS is not proposing to serve only the low-cost areas of any carrier's study area to the exclusion of the high-cost areas, nor is CMS proposing to serve only the exchanges within any rural carrier's study area to which a carrier may have targeted a disproportionately high amount of support."²⁶

Further, the MDOC noted that all four of the rural carriers in whose study areas CMS seeks to provide service have taken advantage of the opportunity to disaggregate and target universal service support at the exchange level within their service territories,

²¹ MDOC Order at 15-16.

²² The "adjustment" referenced by the MPUC refers to the need to incorporate the modifications to CMS's redefinition request set forth in the Modification Letter. In its Final Order, the MPUC stated:

The [MPUC] agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated into the Order, with one adjustment. In a letter dated April 27, 2004, Cellular Mobile Systems of St. Cloud . . . modified its study area redefinition request to include only those exchanges in which the Company serves the entire exchange. A copy of CMS' April 27, 2004 letter detailing this modification is attached. The [MPUC]'s approval is for the Company's request as modified.

²³ See *Highland Cellular Order* ¶ 26.

²⁴ See *id.* ¶ 31.

²⁵ MDOC Order at 15-16.

²⁶ See *id.* at 16.

based on their estimated cost to serve each exchange.²⁷ The Joint Board and the FCC have recognized that targeting support in this manner reduces concerns of rural cream skimming.²⁸

In its *Virginia Cellular Order*, however, the FCC stated that disaggregation does not address all cream skimming concerns.²⁹ The FCC found that cream skimming may still be a concern when a competitor proposes to serve only the low-cost areas to the exclusion of high-cost areas in a rural telephone company's service area.³⁰ The FCC, therefore, analyzed the population densities of the affected wire centers in order to ensure that designating Virginia Cellular as an ETC in portions of rural LEC service areas would not result in the unintended effect of cream skimming.³¹ The MDOC conducted a similar analysis in the areas in which CMS requested study area redefinition at the wire center level. The MDOC found "no evidence that the population densities of each exchange in which CMS proposes to serve as an ETC are significantly higher (and hence presumably low-cost) or significantly different from, those portions of each exchange which CMS proposes to exclude from its service area."³²

B. The MPUC Considered Citizens, Benton, Melrose, and Sherburne's Special Status under the Act

In its Order, the MDOC recognized that Citizens, Benton, Melrose, and Sherburne are rural carriers. The MDOC considered several factors in reviewing CMS's ETC

²⁷ *Id.*

²⁸ See *Federal – State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 ¶¶ 54-55 (February 27, 2004); see also *RCC Holdings* ¶ 39.

²⁹ See *Virginia Cellular Order*.

³⁰ See *id.* ¶¶ 32-33.

³¹ See *id.* ¶¶ 34-35.

³² See MDOC Order at 17.

Petition, including the special status of Citizens, Benton, Melrose, and Sherburne. By finding CMS's ETC designation in the public interest, the MDOC duly recognized the special status of the rural carriers in determining that CMS's ETC service area should be redefined.³³ The MDOC concluded that Citizens, Benton, Melrose, and Sherburne would not be harmed by the redefinition of their study areas.³⁴

C. Redefining the Rural LEC Service Areas Will Not Be Administratively Burdensome

The MDOC considered the administrative burden a rural LEC would face by calculating its cost on a basis other than its entire study area.³⁵ The MDOC stated that it is "not aware of additional administrative burdens on local exchange carriers that would result from such a redefinition of service area."³⁶ Noting that the affected rural LECs would not be required to recalculate costs as a result of service area redefinition, the MDOC concluded that rural carriers would not be harmed by the redefinition of their study areas to conform to CMS's licensed service area.

III. CONCLUSION

For the foregoing reasons, CMS respectfully requests FCC agreement with the MPUC's redefinition of the study areas of Citizens, Benton, Melrose, and Sherburne rural telephone companies to include only the wire centers that CMS serves in their entirety as listed in Exhibit C.

³³ See ETC Petition at 13.

³⁴ See MDOC Order at 17.

³⁵ See *RCC Holdings*.

³⁶ See MDOC Order at 17.

Respectfully submitted,

**CELLULAR MOBILE SYSTEMS OF
ST. CLOUD, LLC**

By: 

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Michael R. Bennet
Rebecca L. Murphy
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Tenth Floor
Washington, DC 20005
202-371-1500

Its Attorneys

Dated: July 2, 2004

Exhibit A – MPUC Final Order

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner Chair
Marshall Johnson Commissioner
Ken Nickolai Commissioner
Phyllis A. Reha Commissioner
Gregory Scott Commissioner

TO: Caressa D. Bennet
Rebecca L. Murphy
Bennet & Bennet, PLLC
1000 Vermont Avenue NW, 10th Floor
Washington, DC 20005

ISSUE DATE: MAY 6, 2004

DOCKET NO. PT6201/M-03-1618

ORDER

In the Matter of the Petition of Cellular Mobile Systems of St. Cloud Requesting Designation as an Eligible Telecommunications Carrier

The above entitled matter has been considered by the Commission and the following disposition made:

The Commission agrees with and adopts the recommendations of the Department of Commerce which are attached and hereby incorporated in the Order, with one adjustment. In a letter filed April 27, 2004, Cellular Mobile Systems of St. Cloud (CMS or the Company) modified its study area redefinition request to include only those rural exchanges in which the Company serves the entire exchange. A copy of CMS' April 27, 2004 letter detailing this modification is attached. The Commission's approval is for the Company's request as modified.

Specifically, therefore, the Commission

1. finds that CMS has made a credible showing, supported by facts and commitments, of its capability and intent to provide and advertise an affordable, quality offering, including the nine federally supported services, throughout its proposed service area (as modified by the Company's April 27, 2004 letter, attached);
2. finds that CMS has fulfilled its requirement to provide the following:
 - * a list of facilities used to provide service in the service area in which CMS seeks ETC certification;

1 * supplemental information regarding CMS's current cellular coverage within its proposed service area, and detailed information as to how, upon a reasonable request from a customer, it will provide service in the areas in which it does not currently have adequate coverage;

2 * an advertising plan specific to the BUS and the availability of Lifeline and Linkup;

3 * an informational tariff that lists the following:

(a) all rates associated with the universal service offering, including the cost of all equipment and installation charges and all other recurring and nonrecurring charges.

(b) all terms and conditions of service associated with its universal service offering. Information typically gathered from ETCs in the annual certifications; and

(c) a list of the Company's federal obligations regarding its service area;

3. designates CMS as an Eligible Telecommunications Carrier for the purposes of receiving federal universal service support, throughout its proposed service area as modified by in CMS' letter filed April 27, 2004 (deleting the exchanges that it partially serves) consistent with the FCC's recently issued Highland Cellular Order;

4. acknowledges CMS' April 27, 2004 modification of the area CMS proposes for redefinition, the Company's deletion of the exchanges that it partially serves, i.e. the exchanges listed in Attachment 9 of the Department of Commerce's April 7, 2004 filing;

5. approves CMS' request to redefine the service areas that, per its April 27, 2004 letter, it continues to seek to redefine;

6. requires CMS, as a post-designation compliance matter, to complete the following:

4 * provide details regarding the frequency and scheduling of its proposed BUS/Lifeline/Linkup advertising;

5 * advertise the availability of Lifeline, Linkup, and its BUS offering on its website; and

6 * establish a process for tracking customer complaints or disputes related to the service quality of its BUS offering, and procedures for making such records available to the Commission upon request; and

7. clarifies that the Company will file its petition to redefine service areas directly with the Federal Communications Commission (FCC).

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

Exhibit B – MDOC Final Order – Public Version



**MINNESOTA
DEPARTMENT OF
COMMERCE**

85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
651.296.4026 FAX 651.297.1959 TTY 651.297.3067

April 7, 2004

PUBLIC DOCUMENT

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: PUBLIC Comments of the Minnesota Department of Commerce
Docket No. PT6201/M-03-1618

Dear Dr. Haar:

Attached are the PUBLIC comments of the Department of Commerce in the following matter:

Petition of Cellular Mobile Systems of St. Cloud, Requesting Designation as an
Eligible Telecommunications Carrier.

The petition was filed on March 2, 2004 by:

Caressa D. Bennet
Rebecca L. Murphy
Bennet & Bennet, PLLC
1000 Vermont Avenue NW, 10th Floor
Washington, DC 20005

The Department recommends **approval with conditions** and is available to answer any questions
the Commission may have.

Sincerely,

KATHERINE DOHERTY
Rates Analyst

KD/sm
Attachment



PUBLIC DOCUMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE**

DOCKET NO. PT6201/M-03-1618

I. BACKGROUND

On October 8, 2003, Cellular Mobile Systems of St. Cloud, LLC (CMS) submitted a petition seeking an Order from the Minnesota Public Utilities Commission (Commission) designating it as an eligible telecommunications carrier (ETC) for the purpose of receiving support from the federal universal service fund. In conjunction with its petition for ETC status, CMS requested that the Commission redefine certain of the service areas of the rural incumbent local exchange carriers in the territories in which it operates, to conform to CMS's licensed service area.

On November 5, 2003, the Department of Commerce (Department) submitted comments recommending that the Commission order that the 180-day time period to make a determination on CMS's request for ETC certification begin upon CMS's submission of a supplemental filing including the following:

- A list of facilities used to provide service in the service area in which CMS seeks ETC certification.
- Supplemental information regarding CMS's current cellular coverage within its proposed service area, and detailed information as to how, upon a reasonable request from a customer, it will provide service in the areas in which it does not currently have adequate coverage.
- An advertising plan specific to the BUS and the availability of Lifeline and Linkup.

- An informational tariff that lists the following:
 1. All rates associated with the universal service offering, including the cost of all equipment and installation charges and all other recurring and non-recurring charges.
 2. All terms and conditions of service associated with its universal service offering.

The Department also recommended that the Commission waive its requirement under Minnesota Rule 7811.1400, subpart 2 that CMS be certified as a competitive LEC to qualify for ETC status and recommended that the Commission conduct a proceeding, consistent with its rules, once a supplemental filing has been submitted, to evaluate the merits of CMS's petition.

The Department recommended that the Commission take no action on CMS's request for high cost certification until such time as final approval of CMS's petition for ETC designation is granted.

On December 11, 2003, the Commission issued an order incorporating the Department's November 5, 2003 comments and adopting the recommendations contained therein.

On March 2, 2004, CMS filed the requested supplemental information, including the following:

- A list of facilities used to provide service in the areas in which the maps demonstrating CMS's current cellular coverage within its proposed service area and detailed information as to how, upon a reasonable request from a customer, CMS will provide service in the areas in which it does not currently have coverage.
- An advertising plan specific to CMS' BUS offering and informing potential customers of the availability of Lifeline and Linkup.
- An informational tariff that lists 1) all rates associated with its universal service offering, including equipment, installation, and all other recurring and non-recurring charges, and 2) terms and conditions of its universal service offering.

II. STATEMENT OF ISSUES

1. Whether CMS has described its universal service offering(s) in enough detail and with sufficient evidence to demonstrate its intent and capability of providing and advertising the services required in 47 CFR section 54.101(a) for the purpose of establishing eligibility for federal universal service funds.
2. Whether designation of CMS as an ETC for the federal universal service fund, in areas served by rural telephone companies, is in the public interest, including whether CMS has demonstrated that its proposed offering is affordable and of sufficient quality.

3. Whether disaggregation of the rural ILECs' service territories to conform to CMS's licensed service area is appropriate and in the public interest.

III. DISCUSSION OF LAW

A. STATEMENT OF COMMISSION JURISDICTION

Responsibility for designating eligible telecommunications carriers rests with the state commissions, except in cases in which they lack jurisdiction over the applicant.¹ State commissions must apply the criteria of the Telecommunications Act of 1996, the criteria set by the FCC, and any applicable state criteria.

The designation process and determination of geographic service areas are different for applicants seeking certification within the service areas of rural and non-rural incumbent carriers. With respect to areas served by non-rural carriers, designation may be at any geographic level and the states are required to designate all qualified applicants.² For areas served by rural companies, designation of ETCs must be at the study area³ level, unless the state commission and the FCC agree to a different geographic service area. A state commission may designate additional qualifying ETCs for areas served by a rural telephone company only if the state commission finds that the designation of more than one carrier is in the public interest.

In recent cases involving petitions for ETC status in Minnesota, the Commission has required carriers to file sufficient information prior to the start of the 180 day review period, such that the Commission may determine not only the carrier's intent and capability of providing the nine supported services throughout its proposed service area, but information which allows Commission to fulfill its obligation to critically evaluate such public interest issues as affordability of rates, service quality, and reliability of service.

¹ 47 U.S.C. section 214(e)(6).

² 47 U.S.C section 214 (e)(2) states:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

³ Minn. Rule 7812.0100, subpart 44b defines study area as "the area designated for a particular local exchange carrier by the FCC." A "study area" is an ILEC's existing service area, and generally includes all of the exchanges in which the company provides service within the state. The study area boundaries were fixed by the FCC as of November 15, 1984. See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 8872 n. 434 (1997).

B. FEDERAL LAW

47 U.S.C section 254(e) provides that "only an eligible telecommunications carrier designated under 214(e) shall be eligible to receive specific Federal universal support."

47 U.S.C. section 214(e)(1) states:

A common carrier designated as an eligible telecommunications carrier ...shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(e) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier) and

(B) advertise the supported services and the charges therefor using media of general distribution.

47 C.F.R. section 54.101(a) outlines the federally supported services:

"The following services or functionalities shall be supported by federal universal service support mechanisms:

- (i) Voice grade access to the public switched network.
- (ii) Local usage.
- (iii) Dual tone multi-frequency signaling or its functional equivalent.
- (iv) Single-party service or its functional equivalent.
- (v) Access to emergency services. "Access to emergency services" includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations.
- (vi) Access to operator services.
- (vii) Access to interexchange service.
- (viii) Access to directory assistance.
- (ix) Toll limitation for qualifying low-income consumers.

47 U.S.C. section 254(b) outlines the universal service principles on which policies should be based on the "preservation and advancement of universal service."

Service quality and rates

Quality services should be available at just, reasonable, and affordable rates.

Access to advanced services

Access to advanced telecommunications and information services should be provided in all regions of the Nation.

Access in rural and high cost areas

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

C. *STATE LAW*

Minnesota Statute section 237.011 outlines the state goals that must be considered as the commission executes its regulatory duties with respect to telecommunication services:

- (1) supporting universal service;
- (2) maintaining just and reasonable rates;
- (3) encouraging economically efficient deployment of infrastructure for higher speed telecommunication services and greater capacity for voice, video, and data transmission;
- (4) encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner;
- (5) maintaining or improving quality of service;
- (6) promoting customer choice;
- (7) ensuring consumer protections are maintained in the transition to a competitive market for local telecommunications service; and
- (8) encouraging voluntary resolution of issues between and among competing providers and discouraging litigation.

IV. ANALYSIS

CMS is a Commercial Mobile Radio Service (CMRS) carrier, providing mobile service as defined in 47 U.S.C. § 153 (27).⁴ CMS is licensed by the Federal Communications Commission (FCC) to provide cellular telecommunications services throughout Stearns, Benton, and Sherburne counties in central Minnesota. CMS's proposed service area includes territory currently served by Qwest Corporation (Qwest), a non-rural incumbent local exchange carrier

⁴ 47 U.S.C. § 153 (27) defines "mobile service" as "a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding."

(ILEC), and seven rural⁵ ILECs - Albany Telephone Company (Albany), Citizens Telecommunications Company (Citizens), Benton Cooperative Telephone Company (Benton), Melrose Telephone Company (Melrose), Sherburne County Rural Telephone Company (Sherburne), Lakedale Telephone Company (Lakedale), and Upsala Cooperative Telephone Association (Upsala).

CMS's Intent and Capability of Providing Service, Upon Customer Request, Throughout its Proposed Service Area

CMS stated in its initial application that it is a "full service wireless carrier which [currently] offers all of [the nine supported services] throughout the service area for which CMS is seeking ETC designation utilizing a combination of its own facilities and resale services of another carrier."⁶

CMS has provided maps⁷ showing its current cellular coverage. The maps demonstrate areas in which a customer can reasonably expect to receive quality service using a 3 watt handset (available to accommodate the basic universal service "fixed wireless unit" which CMS will offer to customers within its service area) (Trade Secret Exhibit 1), and the areas in which a customer can currently expect to receive quality service with a .6 watt cellular mobile handset (Trade Secret Exhibit 2). The Department notes that CMS currently provides coverage throughout most of its requested ETC-designated area.

CMS indicated in its initial petition that it "plans to invest a significant sum in network facility and equipment investments in 2004, including tower installations." The company has provided an estimate of the federal universal service support that, if designated, it expects to receive in calendar year 2004, and, in Exhibit H of its petition⁸, detailed information regarding its planned network facilities and equipment investments and other expenses to be incurred in providing telecommunications services. In response to Department information requests regarding what specific areas in which, if designated as an ETC, CMS plans to construct towers, CMS replied that its construction plans include [TRADE SECRET DATA HAS BEEN EXCISED]

⁵ A rural telephone company is defined at 47 U.S.C. § 147(37) as: "a local exchange carrier operating entity to the extent that such entity - (A) provides common carrier service to any local exchange carrier study area that does not include either - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

⁶ CMS Initial Petition, page 6.

⁷ Trade Secret Attachments 1 and 2.

⁸ Attached as Trade Secret Attachment 3.

In addition, in its Supplemental Filing, CMS has provided additional information, as follows, regarding the steps it will undertake in order to fulfill, upon a reasonable request from a customer, its federal obligation to provide service in the areas in which it does not currently have adequate coverage:

If customers are not satisfied with its service, CMS will take the following steps:

CMS will provide BUS service using mobile handsets. Where coverage is inadequate using mobile handsets, CMS will offer a fixed wireless unit (at an additional charge⁹) that provides enhanced calling capabilities and permits customers to attach ordinary telephone equipment to existing telephone wires within their premises. CMS will provide external antennas ("Yagi" antennas), if necessary, at no additional charge. CMS will also undertake additional efforts to optimize its network facilities serving the customers' premise, if necessary, at no additional charge [to the customer]. If these options are not sufficient to provide the customer with adequate service at the time the request is made, CMS will, within 30 days, evaluate the obstacles to providing the requested phone service to that customer, and provide the customer with available options for the provision of such service, and the estimated time frame for implementing such options.¹⁰

The above options and commitments are included in CMS' Tariff, Section 7(a).

The Department believes that CMS has made a credible showing, supported by facts and commitments, of the Company's intent and capability of providing service throughout its proposed service area.

CMS's Facilities

CMS provided, with its application, a map of its proposed service area, depicting existing cell sites. From this map, it appears that CMS currently has facilities in place to serve much of the area for which it is requesting ETC status. In response to Department information requests, CMS has provided a list of the facilities currently used to provide the supported services in its requested service area, and the specific location (latitude and longitude) of each.¹¹

⁹ The Department notes that CMS' proposed informational tariff indicates that the fixed wireless unit to which CMS refers will be available to customers on a leased basis, at a rate of \$10.00 monthly, according to CMS' BUS Informational Tariff, Section 10(d). (CMS' proposed BUS Tariff and Standard Service Agreement are attached as Attachment 4.)

¹⁰ CMS March 2, 2004 Supplemental Filing, page 2.

¹¹ Attached as Trade Secret Attachment 5.

CMS has fulfilled the requirement to provide a list of the facilities used to provide service throughout its proposed service area.

CMS's Universal Service Offering(s)

CMS stated, in its initial petition, that it is able to provide the following services throughout its proposed service area:

- Voice grade access to the public switched network
- Local usage
- Dual tone multi-frequency signaling
- Single party service
- Access to emergency services
- Access to operator services
- Access to directory assistance
- Toll limitation for qualifying low-income consumers

CMS described a basic universal service package which it will offer to its subscribers, which incorporates the nine supported services listed above, including unlimited local usage. CMS offered a pricing plan for Commission consideration (see "*Affordability*" below).

With its supplemental filing, CMS included a proposed tariff which incorporates, as required by the Commission's Order, all rates associated with the universal service offering - including applicable equipment charges, installation charges, all other recurring and non-recurring charges, and all terms and conditions of service associated with its universal service offering.

Advertising Plan

CMS stated in its initial petition that it will advertise the availability of each of the nine supported services throughout its proposed service area through print media of general distribution.¹² CMS included a list of publications in which advertisements will be placed, and the corresponding markets. With its supplemental filing, CMS has provided a sample print advertisement specifically advertising its universal service offering(s) and the availability of Lifeline and Linkup for qualifying customers.¹³ CMS has not yet provided information regarding the frequency and scheduling of its BUS/Lifeline/Linkup advertising. The Department believes, however, that CMS has demonstrated its intent to advertise the supported services, Lifeline and Linkup, and believes that the additional detail may be provided as a post-designation compliance matter. In addition, upon designation, the Commission should require CMS to advertise the availability of Lifeline, Linkup, and its BUS offering on its website.

¹² CMS indicated in its initial petition that the print advertising may include direct mail, public exhibits, bill inserts and/or telephone directory advertising.

¹³ Attached as Attachment 6.

Public Interest

The FCC rules require that a state commission designate additional qualifying ETCs for areas served by a rural telephone company *only if the state commission finds that the designation of more than one carrier is in the public interest.* (emphasis added)

The FCC does not define the “public interest” factors that the state Commission may or should consider when designating an additional ETC in a rural service area, but has left the public interest determination and the relevant factors which constitute public interest to the discretion of the states themselves.

In general, the Department believes that the designation of additional competitive ETCs in rural areas is consistent with Minnesota’s telecommunications goals of supporting universal service, maintaining just and reasonable rates, promoting customer choice, encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner, and maintaining or improving quality of service.¹⁴

In addition to the level of demonstrated intent by the petitioner to invest in network infrastructure in Minnesota and the general public interest benefits of competition, the Commission has chosen, in previous dockets designating ETCs in Minnesota, to consider affordability and service quality as part of its public interest analysis.

Affordability

CMS has priced its BUS offering at \$14.99 with unlimited local usage, which the Commission has deemed affordable in previous dockets designating wireless carriers as ETCs.¹⁵ In its proposed tariff, CMS describes a one-time installation charge associated with the BUS offering of \$60.00. Although CMS offers its BUS pricing plan for use with a mobile cellular handset, it also offers to lease a fixed wireless unit to customers of its BUS offering for \$10.00 monthly. In addition, CMS has committed to provide an external outdoor (“Yagi”) antenna and associated electronics at no charge to the customer, if necessary to provide quality service.¹⁶ The Department finds the proposed monthly rate of \$14.99 for the BUS offering (\$24.99 including the lease of Company equipment) and the connection charge of \$60.00 reasonable¹⁷ and recommends that the Commission find the rates affordable

¹⁴ Minn. Stat. 237.011.

¹⁵ *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No. P5695/M-98-1265, *In the Matter of the Petition of Midwest Wireless Communications, L.L.C. for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No. PT6153/AM-02-686. *In the Matter of the Petition of RCC Minnesota, Inc. and Wireless Alliance, L.L.C. for Designation as an Eligible Telecommunications Carrier*, MPUC Docket No P6181, 6182/M-02-1503.

¹⁶ In addition, the Company indicates that maintenance of additional Company equipment (including the leased fixed wireless unit) will be the responsibility of the Company (except in cases where customer damage or abuse of the additional company equipment is evident – normal wear and tear excepted.)

¹⁷ In its Order Accepting Compliance Filing, Requiring Further Filing, and Transferring Authority to Transfer Authority to Successor Corporation issued April 19, 2000, *In the Matter of the Petition of WWC Holding Company, Inc. f/k/a/ Minnesota Cellular Corporation for Designation as an Eligible Telecommunications Carrier*, the

Service Quality

CMS claims that it is capable of and willing to provide quality service to its customers at affordable rates. CMS has included provisions in its proposed tariff to ensure consistent and continuing service quality.

CMS' Proposed Tariff and Standard Service Agreement

Description of BUS

CMS's proposed tariff includes a detailed description of its BUS offering which is available to customers both as a mobile cellular service, and as a fixed in-home offering comparable to landline "POTS"¹⁸ service. The BUS offering includes all of the nine supported services required under 47 C.F.R. 54.101(a).

Lifeline and Linkup

CMS's tariff includes informational provisions outlining eligibility and availability of the Federal Link-up and Lifeline programs.

Additional Services Which May be Added to the BUUSO

CMS' tariff includes a list and prices of services which may be added to the BUS for additional charges, which include the following:

- Long distance calling;
- Caller ID;
- Call Waiting;
- Call Forwarding;
- Directory Assistance

Pricing for BUS

The tariff which CMS has submitted for Commission evaluation includes the monthly rate for the Company's BUS, which, excluding taxes and governmental assessments, is \$14.99. The BUS service is offered on a month to month basis. Customers may cancel the BUS service at any time by notifying the company in person, in writing, or by telephone.

The tariff also discloses the one time service activation charge of \$60.00.

Commission found (at page 5) that "the proposed \$14.99 rate meets the affordability requirement of the federal act, mainly because it fits comfortably within the range of rates charged by the incumbent carriers. Incumbent carriers' rates are reasonable both by definition and by empirical standards."

¹⁸ Plain Old Telephone Service.

The tariff includes provisions regarding CMS' proposed deposit, which will not exceed \$200.00 and is based on the customer's credit history. The tariff states that no deposit will be required if the customer elects toll blocking.

Areas in Which the BUS is Available and Local Calling Scope

Included in CMS' proposed tariff is a list of exchanges in which the BUS service is available and the corresponding "Calling Scopes."¹⁹ The tariff notes that "Calling Scopes are equivalent to the calling scopes of the incumbent local exchange carrier (ILEC) exchange(s)."²⁰

Customer Premises Equipment

The tariff includes a brief description of the fixed wireless unit which customers may lease in order to access the Company's cellular network.²¹ The Company offers the fixed wireless local loop equipment to customers on a leased basis for \$10.00 monthly. There is no term agreement or termination penalty associated with the lease of the fixed wireless unit. In addition, as stated above (see "Affordability"), the Company has committed to provide a "Yagi" antenna at no charge to the customer if necessary to provide quality service.

Federal Obligation to Serve

The Department notes that, once designated, CMS will be subject to a Federal obligation to provide service, upon reasonable request, throughout its designated service area. As the FCC has stated, "[a] new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request."²²

CMS has included in its supplemental filing the following statement as to how, upon request from a customer, CMS will provide service in the areas in which it does not currently have coverage:

If customers are not satisfied with its service, CMS will take the following steps. CMS will provide BUS service using mobile handsets. Where coverage is inadequate using mobile handsets, CMS will offer a fixed wireless unit (at an additional monthly

¹⁹ CMS' tariff, Section 11, defines "Calling Scope" as "a geographic area defined by area code and exchange prefix(es) (NPA-NXX) where BUS customers are permitted to originate and terminate calls at no additional charge."

²⁰ CMS tariff, Section 11.

²¹ BUS customers who desire increased mobility also have the option of accessing CMS' cellular network via a .6 watt mobile handset.

²² Federal-State Joint Board on Universal Service, *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No 96-45, FCC 00-248, Declaratory Ruling at ¶ 17, July 11, 2000.

charge²³) that provides enhanced calling capabilities and permits customers to attach ordinary telephone equipment to existing telephone wires within their premises, CMS will also provide external antennas ("Yagi" antennas) if necessary, at no additional charge. CMS will also undertake additional efforts to optimize its network facilities serving the customer's premise, if necessary, at no additional charge. If these options are not sufficient to provide the customer with adequate service at the time that the request is made, CMS will, within 30 days, evaluate the obstacles to providing the requested service to that customer, and provide the customer with available options for the provision of such service and the estimated time frame for implementing such options.

CMS has appropriately included the above commitment in its proposed tariff.²⁴

Disconnection of Service

CMS has included in its tariff its commitment to providing a minimum of 5 business days' written notice prior to disconnection of service, and notes that the Company will not disconnect service on a Saturday, Sunday or United States legal holiday [Section 4 (b)(c) and (d)]. The disconnection provisions included in CMS' tariff are consistent with those required of other ETCs in Minnesota.

Availability of Commission to Advocate for BUS Customers and the Commission's Right to Investigate

CMS notes in its tariff the availability of the Minnesota Public Utilities Commission for customer advocacy in case of a dispute or complaint related to the BUS offering. The tariff includes the address and 800-telephone number of the Minnesota Public Utilities Commission Consumer Affairs Office.

The tariff includes the following statement regarding the Commission's right to investigate CMS's provision BUS service:

Upon a complaint, a petition from the Department, or on the Commission's own motion, the Commission may investigate any change to the CMS Tariff. In its review, the Commission should consider the effect of the change on service quality, availability and affordability. After investigation, the Commission may find that the change is not consistent with the Commission decision to approve CMS' federal ETC status, and rescind the change or revoke CMS' federal ETC status.

²³ CMS has committed to lease the fixed wireless unit to BUS customers at a monthly rate of \$10.00.

²⁴ CMS Tariff Section 7(a), subparts i and ii.

Record-Keeping

CMS has also disclosed in its tariff the following commitment:

The Company will create a record of the instances in which a potential customer requests BUS service and CMS is unable to provide BUS service within thirty (30) days of the time that the customer requests that service be initiated. Such records shall include any remedy proposed by the Company and provided to the customer. The Company will provide any such record(s) created and maintained by the Company to the Commission within 30 days upon notice or request by the Commission.²⁵

In addition to the above, the Department recommends that the Company establish a process for tracking customer complaints or disputes related to the service quality of its BUS offering, and procedures for making such records available to the Commission upon request.

Notification Upon Changes

CMS' proposed Tariff includes provisions for notice to customers, the Commission, and the Department prior to implementing changes to the BUS service rate (including changes to the prices, terms and conditions for additional Company equipment) or to other terms and conditions of the Company's BUS offering (Section 13).

The tariff also provides for written notice to the Commission and to the Department prior to the withdrawal of its BUS offering or any portion thereof.

Standard Agreement

CMS included a copy of its standard "Terms and Conditions of Agreement" (standard terms applicable to all customers of CMS) for reference as an attachment to its tariff. The Company has committed, in its tariff, to submit a copy of any revised standard terms to the Commission upon the issuance of such change. The tariff includes the following clarifying statement regarding the applicability of the standard terms:

This tariff makes reference to certain Sections of the companies Standard Terms, and, where referenced in this Tariff, the Company's Standard Terms shall apply except that, in case of conflict between this Tariff and the Standard Terms, the provisions of this Tariff shall control and supercede that Standard Terms with respect to the subject matter hereof. Where the terms of this tariff are relied upon to resolve any such conflict that may arise between this tariff and the Standard Terms, unaffected Sections of the Standard Terms shall remain in full force and effect and shall not

²⁵ CMS Tariff Section 7(a), subpart iii.

be affected. This Tariff will be deemed to automatically supercede any conflicting terms and conditions of the Standard Terms.²⁶

The Department finds CMS' clarification acceptable.

In summary, the Department believes that the tariff filed by CMS is adequate, fulfills the requirements of the Commission's Order, and is consistent with those filed by similarly situated ETCs in Minnesota.

CMS's Proposed Redefinition of Rural LEC Service Areas

Section 214(e) of the Act requires a designated ETC to offer the required services throughout the service area for which the designation is received. Section 214(e)(5) defines the term "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." Pursuant to Minnesota Rules, 7812.0100, subpt. 51, the term "universal service area" is defined as follows:

- A. with respect to a rural telephone company, the local exchange carrier's study area or any other area designated jointly by the commission and the FCC pursuant to Code of Federal Regulations, title 47, section 54.203, paragraphs (c) and (d); or
- B. the exchange area, or a different geographic unit identified by the commission under part 7812.1400 subpart 3, of a local exchange carrier unless the commission has found the local exchange carrier to be a rural telephone company.

Minn. Rule 7812.1400 subpart 3 states:

A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural telephone company if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 assert that the LEC is a rural telephone company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural telephone company, the commission shall designate the local exchange carrier's exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

²⁶ CMS Basic Universal Service Offering Tariff, Section 1.

Redefinition of the service area of a rural telephone company requires the state Commission's approval. Once approved by the state, a petition must be submitted to the FCC, detailing the proposed service area definition and the State Commission's ruling or official statement outlining the reasons for the proposed definition.

CMS proposes to serve ten exchanges (listed in Attachment 7) in the service area of Qwest, a non-rural carrier. CMS proposes to serve the entire study area of Albany Telephone Company. In the rural study areas that CMS does not serve in their entirety, CMS proposes that the Commission approve redefinition at or below the exchange level to conform to its licensed service area. Attachment 8 lists the rural LEC study areas requiring redefinition at the exchange level. Attachment 9 lists the rural LEC study areas for which CMS proposes that the Commission approve redefinition below the exchange level.

In its 1996 Recommended Decision, which laid the foundation for the FCC's First Report and Order, the Federal-State Joint Board on Universal Service identified three factors to be considered when redefining a service area.²⁷

First, the Joint Board advised state commissions to consider whether the competitive carrier is attempting to "cream skim" by proposing to serve only the lowest cost customers. Secondly, the Commission should consider the regulatory status given to rural local exchange carriers under the Telecommunications Act. Finally, the Joint Board directed the states to consider the administrative burden a LEC would face by calculating its costs on a basis other than its entire study area.

On February 26, 2004, in its recently released Recommended Decision, the Joint Board "continue[d] to endorse the procedures established by the Federal Communications Commission in 1997 for redefinition of rural service areas."²⁸

The Joint Board acknowledged that:

The provisions contained in the *Rural Task Force Order*²⁹ for disaggregation and targeting of universal service support may help alleviate some concerns regarding cream-skimming. Permitting rural carriers to disaggregate and target universal service support allows them to direct universal service support to those zones within the study area where support is most needed. Targeting support in this manner also promotes a better matching of per-line support to the rural carriers' costs of providing service, and helps reduce the economic distortions that could lead to cream

²⁷ Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87, paras 172-174, (1996).

²⁸ Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, para.55, February 27, 2004.

²⁹ In the Matter of Federal-State Joint Board on Universal Service, *Fourteenth Report and Order*, CC Docket No. 96-45, FCC 01-157, May 23, 2001.

skimming. In a study area with disaggregated support, a competitive ETC designated for a service area smaller than the study area will be limited to receiving only the per-line support established for that area.³⁰

The Joint Board "hesitated," however, to state that disaggregation of support "addresses all concerns," noting that "[f]or instance, the [Federal Communications] Commission has recognized that cream skimming may still be a concern where a competitor proposes to serve only the low-cost areas of a rural carrier's study area to the exclusion of high-cost areas. (See e.g., RCC Holdings Order, 17 FCC Rcd at 23546, para. 35; Virginia Cellular ETC Order, FCC 03-338 at paras. 32-33.)"³¹

In the Virginia Cellular ETC Order to which the Joint Board refers above, the FCC recognized that, in addition to deliberate cream-skimming, which occurs when "competitors seek to serve only the low-cost high-revenue customers in a rural telephone company's study area," there may exist situations in which "for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carriers' license covers. Under these circumstances, granting a rural carrier ETC designation for only its licensed portion of the rural study area may have the same *effect* on the ILEC as rural cream-skimming."³²

CMS has based its requested ETC area solely on its licensed service area and does not appear to be deliberately "cream-skimming." Four of the five rural carriers in whose study areas CMS has proposed redefinition at the exchange level have taken advantage of the opportunity, as of May 15, 2002, to disaggregate and target universal service support at the exchange level within their territories, based on their estimated cost to serve each exchange. (See Attachment 10. For the purposes of the Department's analysis, the Department used forward-looking cost estimates from the HAI 5.2 model using Department recommended input factors and model modifications.)

CMS is not proposing to serve only the low-cost areas of any carrier's study area to the exclusion of the high-cost areas, nor is CMS proposing to serve only the exchanges within any rural carrier's study area to which a carrier may have targeted a disproportionately high amount of support.

In the Matter of Virginia Cellular, LLC's Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia (the Virginia Cellular Case), the FCC analyzed the population densities of the affected wire centers in order to ensure that designating Virginia Cellular as an ETC for only its licensed portion of the incumbent rural carriers' study areas would not result in the *unintended effect* of cream-skimming. The FCC

³⁰ Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, para.54, February 27, 2004.

³¹ Id.

³² In the Matter of Virginia Cellular LLC Petition for Designation as Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338, January 22, 2004, para. 32-33.

reasoned that "although there are other factors that define high-cost areas, a low population density typically indicates a high-cost area."³³ The Department has conducted a similar analysis in the areas in which CMS requests study area redefinition below the exchange level. (attached as Attachment 11). The Department finds no evidence that the population densities of the portions of each exchange in which CMS proposes to serve as an ETC, are significantly higher (and hence presumably lower-cost) or significantly different from, those portions of each exchange which CMS proposes to exclude from its service area.³⁴

The Department concludes that rural carriers would not be harmed by the redefinition of their study areas to conform to licensed service area of CMS. Carriers would not be required to recalculate costs as result of service area redefinition. The Department is not aware of additional administrative burdens on local exchange carriers that would result from such a redefinition of service area. The Department notes also that, to the extent rural ILECs wish to further disaggregate or alter the way in which they have targeted the available universal service support within their service areas, they may petition the Commission to do so.

V. RECOMMENDATION

1. The Department recommends that the Commission find that CMS has made a credible showing, supported by facts and commitments, of its capability and intent to provide and advertise an affordable, quality offering, including the nine federally supported services, throughout its proposed service area.
2. The Department recommends that the Commission find that CMS has fulfilled its requirement to provide the following:
 - A list of facilities used to provide service in the service area in which CMS seeks ETC certification.
 - Supplemental information regarding CMS's current cellular coverage within its proposed service area, and detailed information as to how, upon a reasonable request from a customer, it will provide service in the areas in which it does not currently have adequate coverage.
 - An advertising plan specific to the BUS and the availability of Lifeline and Linkup.

³³ *In the Matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order in CC Docket No. (6-45, FCC-03-338, released January 22, 2004, paras 32-35.

³⁴ In the Virginia Cellular Case, the FCC concluded that it would not be in the public interest to designate Virginia Cellular as an ETC in the study area of a rural carrier in which Virginia Cellular proposed, based on its licensed service area, to serve only one wire center. The FCC determined that the population density in the affected wire center was approximately 273 persons per square mile, while the average population density of the remaining wire centers in the underlying study area was determined to be approximately 33 persons per square mile. The FCC found that designating Virginia Cellular as an ETC only in one wire center with a population density far higher than the that of the remainder of the underlying study area, could 'significantly undermine the [rural carrier's] ability to serve its entire study area.' *Id.* para. 35.

- An informational tariff that lists the following:
 - (a) All rates associated with the universal service offering, including the cost of all equipment and installation charges and all other recurring and non-recurring charges.
 - (b) All terms and conditions of service associated with its universal service offering. Information typically gathered from ETCs in the annual certifications.
 - (c) A list of the Company's federal obligations regarding its service area.
- 3. The Department recommends that the Commission designate CMS as an Eligible Telecommunications Carrier for the purposes of receiving federal universal service support, throughout its proposed service area.
- 4. The Department recommends that the Commission approve CMS' request to redefine the service areas of the incumbent LECs in whose territory it seeks to provide service, to correspond with CMS' licensed service area in Minnesota (encompassing the counties of Stearns, Sherburne and Benton Counties) and petition the FCC for concurrence.
- 5. The Department recommends that, as a post-designation compliance matter, CMS be required to complete the following:
 - Provide details regarding the frequency and scheduling of its proposed BUS/Lifeline/Linkup advertising.
 - Advertise the availability of Lifeline, Linkup, and its BUS offering on its website.
 - Establish a process for tracking customer complaints or disputes related to the service quality of its BUS offering, and procedures for making such records available to the Commission upon request.

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